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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 97- 49

In the Matter of)
)
Assessment and Collection) MD Docket No. 96-186
of Regulatory Fees for)
Fiscal Year 1997)

NOTICE OF PROPOSED RULEMAKING

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By the Commission:

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I. Introduction

1. By this Notice of Proposed Rulemaking, the Commission commences a proceeding to revise its Schedule of Regulatory Fees in order to recover the amount of regulatory fees that Congress, pursuant to Section 9(a) of the Communications Act, as amended, has required it to collect for Fiscal Year (FY) 1997. See 47 U.S.C. § 159 (a).
2. Congress has required that we collect \$152,523,000 through regulatory fees in order to recover the costs of our enforcement, policy and rulemaking, international and user information activities for FY 1997. Public Law 104-208 and 47 U.S.C. § 159(a)(2). This amount is \$26,123,000 or nearly 21% more than the amount that Congress designated for recovery through regulatory fees for FY 1996. See Assessment and Collection of Regulatory Fees for Fiscal Year 1996, FCC 96-295, released July 5, 1996, 61 FR 36629 (July 12, 1996). Thus, we are proposing to revise our fees in order to collect the increased amount that Congress has required that we collect. Additionally, we propose to amend the Schedule in order to assess regulatory fees upon licensees and/or regulatees of services not previously subject to payment of a fee, to simplify and streamline the Fee Schedule, and to clarify and/or revise certain payment procedures. 47 U.S.C. § 159(b)(3).
3. In proposing to revise our fees, we adjusted the payment units and revenue requirement for each service subject to a fee, consistent with Sections 159(b)(2) and (3). In addition, we have made changes to the fees pursuant to public interest considerations. The current Schedule of Regulatory Fees is set forth in sections 1.1152 through 1.1156 of the Commission's rules. 47 CFR §§ 1.1152 through 1.1156.

II. Background

4. Section 9(a) of the Communications Act of 1934, as amended, authorizes the Commission to assess and collect annual regulatory fees to recover the costs, as determined annually by Congress, that it incurs in carrying out enforcement, policy and rulemaking, international, and user information activities. 47 U.S.C. 159(a). See Attachment I for a description of feeable activities. In our FY 1994 Fee Report and Order, 59 FR 30984 (June 16, 1994), we adopted the Schedule of Regulatory Fees that Congress established and we prescribed rules to govern payment of the fees, as required by Congress. 47 U.S.C. § 159(b), (f)(1). Subsequently, in our FY 1995 and FY 1996 Fee Reports and Orders, 60 FR 34004 (June 29, 1995) and 61 FR

36629 (July 12, 1996), we modified the Schedule to increase by approximately 93 percent and 9 percent, respectively, the revenue generated by these fees in accordance with the amounts Congress required us to collect in FY 1995 and FY 1996. Also, in both our FY 1995 and FY 1996 Fee Reports and Orders, we amended certain rules governing our regulatory fee program based upon our experience administering the program in prior years. See 47 CFR §§ 1.1151 et seq.

5. As noted above, for FY 1994 we adopted the Schedule of Regulatory Fees established in Section 9(g) of the Act. For fiscal years after FY 1994, however, Sections 9(b)(2) and (3), respectively, provide for "Mandatory Adjustments" and "Permitted Amendments" to the Schedule of Regulatory Fees. 47 U.S.C. § 159(b)(2), (b)(3). Section 9(b)(2), entitled "Mandatory Adjustments," requires that we revise the Schedule of Regulatory Fees whenever Congress changes the amount that we are to recover through regulatory fees. 47 U.S.C. § 159(b)(2).

6. Section 9(b)(3), entitled "Permitted Amendments," requires that we determine annually whether adjustments to the fees are warranted based upon the requirements of this subsection and that, whenever we make such adjustments, we take into account factors that are reasonably related to the payer of the fee and factors that are in the public interest. In making these amendments, we are to "add, delete, or reclassify services in the Schedule to reflect additions, deletions or changes in the nature of its services." 47 U.S.C. § 159(b)(3).

7. Section 9(i) requires that we develop accounting systems necessary to adjust our fees pursuant to changes in the costs of regulation of the various services subject to a fee and for other purposes. 47 U.S.C. § 9(i). In this proceeding, we are proposing for the first time to rely on cost accounting data to identify our regulatory costs and to develop our FY 1997 fees based upon these costs. Also, as noted, we are proposing to limit the increase in the amount of the fee for any service in order to phase in our reliance on cost-based fees for those services whose proposed revenue requirement would be more than 25 percent above the revenue requirement which would have resulted from the "mandatory adjustments" to the FY 1996 fees without incorporation of costs. The methodology we propose enables us to develop regulatory fees which more closely reflect our costs of regulating a service and also allows us to make annual revisions to our fees based to the fullest extent possible, and consistent with the public interest, on the actual costs of regulating those services subject to a fee. Finally, Section 9(b)(4)(B) requires that we notify Congress of any permitted amendments 90 days before those amendments go into effect. 47 U.S.C. § 159(b)(4)(B).

III. Discussion

A. Summary of FY 1997 Fee Methodology

8. As noted above, Congress has required that the Commission recover \$152,523,000 for FY 1997 through the collection of regulatory fees, representing the costs applicable to our enforcement, policy and rulemaking, international, and user information activities. 47 U.S.C.

§ 159(a). Congress' increase does not fall equally on all payers due to revised payment units and revenue requirement allocations resulting from the cost accounting system.

9. In developing our proposed FY 1997 fee schedule, we first estimated payment units¹ for FY 1997 in order to determine the aggregate amount of revenue we would collect without any revision to our FY 1996 fees. Next, we compared this revenue amount to the \$152,523,000 that Congress has required us to collect in FY 1997 and pro-rated the shortfall among all the existing fee categories. We then adjusted the projected revenue requirements so that they equaled the actual costs of each service, using data generated by our cost accounting system, described infra, to ensure that revenues equaled our regulatory costs for each fee category.

10. We next examined the impact of using actual costs to establish regulatory fees for each class of regulatees to determine whether any regulatees experienced an unduly large fee increase. We found that, in many cases, cost-based fees result in fee payments dramatically higher in FY 1997 than they were in FY 1996. Therefore, rather than proposing fully cost-based fees for FY 1997, we are proposing to phase in full reliance on cost-based fees and, for FY 1997, to establish a revenue ceiling in each service no higher than 25 percent above the revenue that payers within a fee category would have paid if FY 1997 fees had remained at FY 1996 levels adjusted only for changes in volume and the increase required by Congress. Our proposed methodology would reduce fees for services whose regulatory costs have declined while increasing fees for services experiencing higher regulatory costs in order to begin eliminating disparities disclosed by our cost accounting system between a service's current costs and fees ascribed to these services in prior fiscal years.

11. Once we established our tentative FY 1997 fees, we evaluated various proposals made by Commission staff concerning other adjustments to the Fee Schedule and to our collection procedures. The proposals are discussed in Paragraphs 20-40 and are factored into our proposed FY 1997 Schedule of Regulatory Fees, set forth in Attachment F.

12. Finally, we have incorporated, as Attachment H, proposed Guidance containing detailed descriptions of each fee category, information on the individual or entity responsible for paying a particular fee and other critical information designed to assist potential fee payers in determining the extent of their fee liability, if any, for FY 1997.² In the following paragraphs, we describe in greater detail our methodology for establishing our FY 1997 regulatory fees.

¹ Payment units are the number of subscribers, mobile units, pagers, cellular telephones, licenses, call signs, adjusted gross revenue dollars, etc. which represent the base volumes against which fee amounts are calculated.

² We also will incorporate a similar Attachment in the Report and Order concluding this rulemaking. That Attachment will contain updated information concerning any changes made to the proposed fees adopted by the Report and Order.

B. Development of FY 1997 Fees

1. Adjustment of Payment Units

13. As the first step in calculating individual service regulatory fees for FY 1997, we adjusted the estimated payment units for each service because payment units for many services have changed substantially since we adopted our FY 1996 fees. We obtained our estimated payment units through a variety of means, including our licensee data bases, actual prior year payment records, and industry and trade group projections. Whenever possible, we verified these estimates from multiple sources to ensure the accuracy of these estimates. Attachment B provides a summary of how revised payment units were determined for each fee category.³

2. Calculation of Revenue Requirements

14. We next multiplied the revised payment units for each service by our FY 1996 fee amounts in each fee category to determine how much revenue we would collect without any change to the existing Schedule of Regulatory Fees. The amount of revenue we would collect is approximately \$136.5 million. This amount is approximately \$16.0 million less than the amount the Commission is required to collect in FY 1997. We then adjusted these revenue requirements for each fee category on a proportional basis, consistent with Section 9(b)(2) of the Act, to obtain an estimate of revenue requirements for each fee category at the \$152,523,000 level required by Congress for FY 1997. Attachment C provides detailed calculations showing how we determined the revised revenue amount for each service.

3. Calculation of Regulatory Costs

15. On October 1, 1995, the Commission established, in accordance with 47 U.S.C. § 159(i), a cost accounting system designed, in part, to provide us with useful data, in combination with other information, to help ensure that fees closely reflected our actual costs of regulation. The Commission's cost accounting system, which is integrated with our personnel/payroll system to ensure accuracy and timeliness of cost information, accumulates both personnel and non-personnel costs on a service-by-service basis.

16. In order to utilize actual costs for fee development purposes, we first had to add indirect support costs to the direct costs⁴ and then adjust the results to approximate the amount of

³ It is important to note also that, due to revised payment units, Congress' required revenue increase in regulatory fee payments of approximately 21 percent in FY 1997 will not fall equally on all payers.

⁴ One feature of the cost accounting system is that it separately identifies direct and indirect costs. Direct costs include salary and expenses for (a) staff directly assigned to our operating Bureaus and performing regulatory activities and (b) staff assigned outside the operating Bureaus to the extent that their time is spent performing regulatory activities pertinent to an operating Bureau. These costs include rent, utilities and

revenue that Congress requires us to collect in FY 1997 (\$152,523,000).⁵ Thus, we adjusted the actual cost data pertaining to regulatory fee activities recorded for the period October 1, 1995 through September 30, 1996 proportionally among the fee categories so that total costs approximated \$152,523,000. For fee categories where fees are further differentiated by class or market (e.g., Markets 1-10 under the general VHF and UHF Commercial Television fee category), we distributed the costs to the class or market group by maintaining the same ratios between the classes or market groups as between the fees in the FY 1996 schedule.⁶ The results of these calculations are shown in detail in Attachment D and represent our best estimate of actual total attributable costs relative to each fee category for FY 1997.⁷

contractual costs attributable to such personnel. Indirect costs include support personnel assigned to overhead functions such as field and laboratory staff and certain staff assigned to the Office of Managing Director. The combining of direct and indirect costs is accomplished on a proportional basis among all fee categories as shown on Attachment D.

⁵ Congress' estimate of costs to be recovered through regulatory fees is generally determined twelve months before the end of the fiscal year to which the fees actually apply. As such, year-end actual activity costs for FY 1996 do not equal exactly the amount Congress designated for collection for FY 1997.

⁶ While some might argue that the Commission should further distinguish our work activities by fee category (e.g., television markets or radio classes), it would not be practical to use small, time-consuming incremental breakouts of work time.

⁷ For example, under the FM Radio fee classification, the actual costs attributable to FM radio are \$8,452,323. This amount is allocated to FM Classes C,C1,C2,B; Classes A,B1,C3; and FM Construction Permits (CP) as follows:

(1) First we determine the relationships between the three categories by dividing the smallest of the FY 1996 FM fees into each of the FY 1996 FM fees to determine the appropriate ratios for allocation of the revenue requirement.

(a) FY 1996 FM CP fee = \$690
FY 1996 FM Classes A, B1, and C3 = \$830
FY 1996 FM Classes C, C1, C2, and B = \$1,250

(b) FM CP ratio is \$690 divided by \$690 = 1:1
FM Classes A, B1, and C3 ratio is \$830 divided by \$690 = 1:1.2
FM Classes C, C1, C2, and B ratio is \$1,250 divided by \$690 = 1:1.8

(2) Next we add the three ratios and divide the sum into the total revenue requirement for FM to determine the amount corresponding to the ratio of 1.

(a) $1 + 1.2 + 1.8 = 4$

(b) $\$8,452,323 \text{ divided by } 4 = \$2,113,081$

(3) Finally, we determine the fee for each of the three by multiplying the amount calculated in step (2)(b) by each of the ratios.

4. Establishment of 25% Revenue Ceiling

17. Our next step was to determine whether reliance on actual costs to develop FY 1997 regulatory fees would result in fees which are too disparate from corresponding FY 1996 fees. As a result of this analysis, we are proposing to establish a ceiling of 25 percent on the increase in the revenue requirement of any service over and above the Congressionally mandated increase in the overall revenue requirement and the difference in unit counts.⁸ Because Congress has increased our overall fee collection requirement, we are already required to collect substantially more than we collected in FY 1996. Nevertheless, capping each service's revenue requirement at no more than a 25 percent increase enables us to begin the process of reducing fees for services with lower costs and increasing fees for services with higher costs in order to close the gap between actual costs and fees designed to recover these costs. We are not suggesting that fee increases be limited to a 25 percent increase over the FY 1996 fees. The 25 percent increase is over and above the revenue which would be required after adjusting for the projected FY 1997 payment units and the proportional share of the 21 percent increase in the amount that Congress requires us to collect. Thus, FY 1997 fees may increase more than 25 percent over FY 1996 fees depending upon the number of payment units.

18. An important consideration in proposing the establishment of a revenue ceiling is the impact on other fee payers. Because the Commission is required to collect a full \$152,523,000 in FY 1997 regulatory fees, the additional revenue (\$28,024,533) that would have been collected from classes of licensees subject to the revenue ceiling had there been no ceiling, needs to be collected instead from licensees not subject to the ceiling. This results in a certain amount of subsidization between fee payer classes.⁹ We believe, however, that the public interest is best served by adopting our proposed revenue ceiling methodology. To do otherwise would subject several entities to unexpected major increases which would severely impact the economic well being of certain licensees who will not be able to adjust their business plans accordingly. Attachment E displays the step-by-step process we used to calculate adjusted revenue requirements for each fee category for FY 1997, including the

FM CP revenue requirement = 1 times \$2,113,081 = \$2,113,081

FM Classes A, B1, and C3 revenue requirement = 1.2 times \$2,113,081 = \$2,535,697

FM Classes C, C1, C2, and B revenue requirement = 1.8 times \$2,113,081 = \$3,803,546

⁸ For example, the regulatory cost associated with the Aviation (Aircraft) service is \$933,492. If no change were made to this service's FY 1996 regulatory fee (\$3 per year), the total revenue collected from licensees in this service would be only \$117,327 in FY 1997, a shortfall of \$816,165. Application of the proposed 25 percent revenue ceiling to this service results in a capped revenue ceiling of \$146,659 (\$117,327 x 125%).

⁹ Revenues from current fee payers already offset costs attributable to regulatees exempt from payment of a fee or otherwise not subject to a fee pursuant to section 9(h) of the Act or the Commission's rules. For example, CB and ship radio station users, amateur radio licensees, governmental entities, licensees in the public safety radio services, and all non-profit groups are not required to pay a fee. The costs of regulating these entities is borne by those regulatees subject to a fee requirement.

reallocation of revenue requirements resulting from the application of our proposed revenue ceilings.¹⁰ We invite comments on our proposed methodology to incorporate actual costs into the computation of regulatory fees and to establish the 25 % revenue ceiling.

5. Recalculation Of Fees

19. Once we determined the amount of fee revenue necessary to collect from each class of licensee, we divided the revenue requirement by the number of payment units (and by the license term, if applicable, for "small" fees) to obtain actual fee amounts for each fee category. These calculated fee amounts were then rounded in accordance with Section 9(b)(3) of the Act. See Attachment E.

6. Other Proposed Change--Consolidation of Private Microwave & Domestic Public Fixed Fee Categories

20. We examined the results of our calculations made in Paragraphs 15-19 to determine if further adjustments of the fees and/or changes to payment procedures were warranted based upon the public interest and other criteria established in 47 U.S.C. 159(b)(3). As a result of this review, we are proposing the following change to our Fee Schedule:

21. In our FY 1994, FY 1995 and FY 1996 fee schedules, Private Microwave licensees were required to pay a "small" regulatory fee, in advance, for the entire license term at the time of application. In contrast, the Domestic Public Fixed category was considered a "large" regulatory fee subject to an annual payment. The domestic public fixed category is comprised of several commercial microwave services; e.g., microwave multiple address, microwave common carrier fixed, microwave digital electronic message, and microwave local TV transmission.¹¹

22. Since inception of the regulatory fee program, many parties holding microwave licenses have expressed confusion concerning which fee they are required to pay. In order to alleviate this confusion and because operational and technical characteristics of private microwave and

¹⁰ Application of the 25 % ceiling was accomplished by choosing a "target" fee revenue requirement for each individual fee category. This "target" was either the actual calculated revenue requirement (for those categories at or below the 25 % ceiling) or, in the case where the calculated revenue exceeded the ceiling, an amount equal to the ceiling. The shortfall created by reducing the revenue requirement of those whose revenue requirement exceeded the revenue ceiling was proportionately spread among those fee categories whose revenue requirements were below the ceiling. This computation required more than one round of adjustment because the allocation of this revenue, in a few instances, caused the new revenue requirement amount to exceed the 25% ceiling. After two iterations (rounds), all the revenue requirements were at or below the revenue ceiling. See Attachment E.

¹¹ Although the Multipoint Distribution Service (MDS) and the Multichannel Multipoint Distribution Service (MMDS) were originally grouped with Domestic Public Fixed services, we have, since FY 1995, listed them separately in our Fee Schedule.

commercial microwave systems are similar, we are proposing to combine these two fee categories into a single Microwave category for FY 1997.

23. Accordingly, we are proposing to adjust the anticipated number of payment units and combine the revenue requirements for the Private Microwave and Domestic Public Fixed categories and establish a "small" fee, payable in advance for the entire license term, for the new consolidated Microwave category. The annual regulatory fee for all microwave licensees would be \$10 per license. This new fee was calculated as follows:

(a) From Attachments C and E:

- (1) 5,350 private microwave stations (units) (Revenue requirement = \$523,083)
- (2) 18,845 commercial microwave/public fixed stations (units) (Revenue requirement = \$118,026)

(b) Converting from annual payment ("large fee") to license term payment ("small fee"):

- (1) 18,845 commercial microwave units divided by 10 year license term = 1,885 commercial microwave units to be licensed each year.

(c) Calculation of new microwave fee: The sum of the two revenue requirements divided by the sum of the units to be licensed and divided by the license term as follows:

- (1) $((\$523,083 + \$118,026) \text{ divided by } (5,350 + 1,885)) \text{ divided by } 10 \text{ years} = \8.86

(d) Round fee to the nearest \$5 = \$10 (47 U.S.C § 159(b)(2))

24. We invite comments on our proposal to combine the Private Microwave and Domestic Public Fixed (Commercial Microwave) service categories for regulatory fee purposes into a single Microwave category and to establish an appropriate "small" fee for this single category.

7. Effect of Revenue Redistributions on Major Constituencies

25. The chart below illustrates the relative percentages of the revenue requirements borne by the major constituencies since inception of regulatory fees in FY 1994.

REVENUE REQUIREMENT PERCENTAGES BY CONSTITUENCIES				
	FY 1994 (Actual)	FY 1995 (Actual)	FY 1996 (Actual)	FY 1997 (Proposed)
Cable TV Operators (Inc. CARS Licenses)	41.36	24.02	28.19	23.74
Broadcast Licensees	23.84	13.76	14.77	14.96
Satellite Operators (Inc. Earth Stations)	3.32	3.62	4.28	4.28
Common Carriers	25.01	44.52	45.54	46.27
Wireless Licensees	6.47	14.07	7.23	10.75
TOTAL	100.00	99.99	100.01	100.00

C. Other Issues

1. Commercial AM/FM Radio

26. In November 1996 the Commission released a Notice of Inquiry to determine if, in FY 1997, it is feasible to utilize a methodology based on market size and class of station to assess annual regulatory fees upon licensees of commercial AM and FM broadcast radio stations. We invited interested parties to comment upon a methodology proposed by the Montana Broadcasters Association (Montana), or to propose any other methodology for assessing AM and FM fees they believe would serve the public interest. See Amendment of Part 1 of the Commission's Rules Pertaining to the Schedule of Annual Regulatory Fees for Mass Media Services, FCC 96-422, released November 6, 1996, 61 FR 59397 (November 22, 1996).

27. In establishing our regulatory fee program, we recognized that Congress had required the Commission to adopt the Schedule of Regulatory Fees for FY 1994 contained in Section 9(g) of the Communications Act, as amended. 47 U.S.C. § 159(g). The Schedule assessed AM and FM radio fees based upon class of station. Thus, each licensee paid a fee identical to other licensees with the same class of station, without regard to the size or population of its service area. See Implementation of Section 9 of the Communications Act, 9 FCC Rcd 5333, 5339 (1994), 59 FR 30984 (June 16, 1994). We declined to consider any revision to the fee

schedule for FY 1994, but we invited interested parties to propose alternative methodologies for various services subject to the regulatory fees, including AM and FM radio, for consideration in our proceeding to adopt the FY 1995 Schedule of Regulatory Fees. 9 FCC Rcd 5360. Subsequently, in our NPRM proposing fees for FY 1995, we recognized that "population density of a [AM or FM] station's geographic location was also a public interest factor warranting recognition in the fee schedule." Therefore, we proposed for consideration by interested parties a methodology incorporating market size in the calculation of AM and FM fees, by assessing higher fees for radio stations located in Arbitron Rating Co. (Arbitron) designated markets. We proposed a two-tiered fee schedule with stations in Arbitron rated markets paying higher fees than the same classes of stations located in smaller, non-Arbitron rated markets. See Notice of Proposed Rulemaking in the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 1995, MD Docket No. 95-3, FCC 95-14, released January 12, 1995 at Paragraph 29. In our Report and Order establishing our FY 1995 fees, we declined to adopt this proposed method because, after consideration of the public comments, we found that it did not provide a "sufficiently accurate and equitable methodology for determining fees." See Assessment and Collection of Regulatory Fees for Fiscal Year 1995, 10 FCC Rcd 13512, 13531-32 (1996), 60 FR 34004 (June 29, 1995).

28. In our Notice of Proposed Rulemaking to establish regulatory fees for FY 1996, we stated, with regard to the fees for AM and FM radio stations, that we "were particularly interested in a proposal which would associate population density and service area contours with license data" and we again requested interested parties to propose viable alternative methodologies for assessment of AM and FM fees. Assessment and Collection of Regulatory Fees for Fiscal Year 1996, FCC 96-153, at Paragraphs 20-21 (April 9, 1996), 61 FR 16432 (April 15, 1996). In response, Montana filed comments proposing an AM and FM fee structure based on class of station and on market size. We received no comments addressing Montana's proposal. However, following our own review of the proposal, we decided not to take any action until we had an opportunity to evaluate more extensively the impact of Montana's proposal on AM and FM licensees through a Notice of Inquiry. Assessment and Collection of Regulatory Fees for Fiscal Year 1996, FCC 96-295, at Paragraphs 23-29, July 5, 1996, 61 FR 36629 (July 12, 1996).

29. Montana's proposed methodology utilizes broad groupings of radio markets determined by Arbitron market size, with the fee for each market grouping predicated on the ratios that Congress initially established in Section 9(g) of the Act (47 U.S.C. § 159(g)) for assessing fees for licensees of television stations serving different sized markets. Montana proposed four specific radio market classifications: Markets 1-25; Markets 26-50; Markets 51-100; and Remaining Markets. Montana's proposal assigned stations to each market grouping based upon Arbitron television market designations and relied on an analysis of broadcast markets prepared by Dataworld MediaXpert Service ("Dataworld"), which grouped radio stations by class of station within a particular market size. It then calculated the fees for stations in different markets utilizing the ratios between the fees for television markets in Section 9(g). Montana argued that its proposal was more equitable than the groupings based on class of station relied on by the Commission because, under its proposal, stations in smaller markets

would pay lower fees than stations serving more populous markets.

30. In order to collect the total aggregate fees to be recovered from AM and FM radio stations as proposed in the FY 1995 NPRM, Montana's proposed methodology would have allocated fees among radio stations as follows:

Markets	AM Class A	AM Class B	AM Class C	AM Class D	FM Class I ¹²	FM Class II ¹³
1-25	\$2,890	\$1,710	\$645	\$815	\$2,890	\$1,940
26-50	\$2,040	\$1,140	\$455	\$575	\$2,040	\$1,370
51-100	\$1,360	\$760	\$305	\$385	\$1,360	\$910
Remaining	\$850	\$475	\$190	\$240	\$850	\$570

31. However, subsequent to the filing of Montana's proposal, Congress increased the aggregate amount of fees to be recovered by the Commission and amended the Commission's regulatory fee schedule for television stations to increase the fees paid by licensees in larger markets and to reduce the fees paid by licensees located in Markets 51-100 and the Remaining Markets. Public Law 104-134. See Assessment and Collection of Regulatory Fees for Fiscal Year 1996, *supra* at Paragraph 14. This substantially changed the ratios between the fees for television stations in different sized markets used by Montana to compute its proposed radio fees. Substituting the actual ratios between the regulatory fees for television stations in different sized markets for the old ratios utilized in Montana's proposal would have produced the following radio fees for FY 1996:¹⁴

¹² Class I includes FM Classes C, C1, C2 and B.

¹³ Class II includes FM Classes A, B1 and C3.

¹⁴ By contrast, according to the FY 1996 Schedule of Regulatory Fees, AM class A stations are assessed a fee of \$1,250; Class B stations \$690; Class C stations \$280; and Class D stations \$345. Similarly, FM Class C, C1, C2 and B stations (Montana's FM Class I) are assessed a fee of \$1,250; and FM Class A, B1 and C3 stations (Montana's FM Class II) a fee of \$830.

Markets	AM Class A	AM Class B	AM Class C	AM Class D	FM Class I ¹⁵	FM Class II ¹⁶
1-25	\$11,500	\$6,325	\$2,575	\$3,150	\$4,875	\$3,250
26-50	\$6,675	\$3,675	\$1,500	\$1,850	\$2,850	\$1,900
51-100	\$3,550	\$1,975	\$800	\$980	\$1,525	\$1,000
Remaining	\$1,000	\$555	\$225	\$275	\$430	\$285

32. The above fees illustrate the impact of the Montana proposal when the changes mandated by Congress to the Regulatory Fee Schedule are considered. We are particularly concerned about the size of the increases in larger markets which, in addition to having more potential listeners, have greater concentrations of stations, thereby increasing the competition for listeners in those markets. Moreover, the accuracy of both sets of calculations are predicated on assumptions that the total aggregate amount of fees to be collected remains unchanged, that the revenue requirement allocated to all broadcast licensees remains unchanged, and that there are no changes in the numbers and classes of licensees subject to broadcast fees. The calculations presented herein are illustrative only, because the fees are predicated on assumptions that will not recur in FY 1997. A change in any or all three of these factors would result in individual fees different than those illustrated in Paragraphs 30 and 31.

33. In response to the NOI, the National Association of Broadcasters ("NAB") submitted a proposed fee table for AM and FM radio stations relying on a database prepared by Dataworld. NAB states that Dataworld developed its database by using the engineering specifications for every operating AM and FM radio station to calculate the populations served by those stations using 1990 census information. Under NAB's proposal, stations with more powerful signals would generally pay higher fees because they usually serve more people than stations with weaker signals. NAB maintains that a fee schedule based on the Dataworld information would equitably allocate fees among all stations.

34. In support of its proposal, NAB notes that Congress has recognized the importance of service classes in the fee schedule it enacted in Section 9(g) of the Act, and that there are significant differences in the value and revenue potential of stations in different classes. 47 U.S.C. § 159(g). Thus, NAB contends that radio station fees should not be calculated on the basis of predicted audience alone. Moreover, NAB recognizes that Dataworld's data does not reflect population changes since 1990 and that, in certain instances, there will be discrepancies between the Dataworld calculations and some stations' actual engineering

¹⁵ Class I includes FM Classes C, C1, C2 and B.

¹⁶ Class II includes FM Classes A, B1 and C3.

characteristics. Thus, NAB proposes fees based on the estimate of population served and the class of station rather than strictly on the basis of population served.

35. The proposed NAB fee table includes 24 fee levels for AM and 12 fee levels for FM. NAB's proposed fee table would collect \$6,104,196 from FM licensees and \$2,235,956 from AM licensees, as follows:

Population Served	AM Class A	AM Class B	AM Class C	AM Class D
<= 100,000	\$325	\$260	\$125	\$165
100,001 - 250,000	\$375	\$325	\$175	\$225
250,001 - 500,000	\$575	\$450	\$250	\$325
500,001 - 1,500,000	\$975	\$650	\$325	\$425
1,500,001 - 3,000,000	\$1,500	\$950	\$450	\$575
> 3,000,000	\$1,800	\$1,300	\$650	\$750

Population Served	FM Classes A, B1, C3	FM Classes B, C, C1, C2
<= 40,000	\$300	\$450
40,001 - 100,000	\$450	\$925
100,001 - 250,000	\$925	\$1,350
250,001 - 750,000	\$1,150	\$1,750
750,001 - 1,750,000	\$1,300	\$2,000
> 1,750,000	\$1,650	\$2,750

36. While the NAB proposal has merit, further study and refinement of its methodology is required. First, we note that the NAB proposal increases fees based on the average increase in the amount that Congress has required us to collect for FY 1997 without taking into account our cost of regulation of AM and FM stations as measured by our cost accounting system. As a result, its proposal would fail to raise sufficient revenue to cover the pro rata share of the Commission's revenue requirements for AM and FM radio. Moreover, NAB's proposal does not disclose the number of stations in each of its payment categories so that its proposal can be modified to meet our revenue requirements, there are discrepancies between our estimate of the number of stations and the number of stations included in Dataworld's database, and it is not clear whether the Dataworld station count includes government and non-commercial stations which are exempt from regulatory fee requirements. In addition, NAB has not presented an explanation or rationale for its specific fee classifications. Nor is

there sufficient information to permit the Commission to determine how NAB's proposed fee table can be modified to cover changes in station characteristics and populations. If we were to adopt NAB's proposal, we would also be required to develop a methodology for advising each individual station of its fee based on our estimate of the population in its service area.

37. Thus, while the Montana and NAB proposals hold the promise of a more equitable fee schedule, there are problems with these proposals that must be addressed before they can be relied on to develop a revised fee schedule for AM and FM radio. Therefore, interested parties are invited to comment not only on both the NAB and Montana proposals, but also on any alternative methods for assessing radio station fees. Parties who have filed comments on the NOI need not duplicate them in this proceeding. Comments are also invited with respect to the revised schedule for AM and FM radio stations set forth in Attachment F based on the general methodology for calculating FY 1997 fees.

2. Personal Communications Service (PCS)

38. Our FY 1996 Report and Order deferred assessing a regulatory fee upon licensees in the Personal Communications Service ("PCS") in FY 1996 because the service was in a very early start-up phase. See FY 1996 Report and Order at Appendix F, Paragraph 15. We now believe that there are sufficient operational PCS systems to justify their inclusion among those licensees who are assessed fees in the CMRS Mobile Services and CMRS One-Way Paging fee categories for FY 1997. We have therefore incorporated fees for PCS in Paragraphs 14 and 15 of Attachment H.

3. Commercial Mobile Radio Services (CMRS)

39. In our FY 1996 Report and Order at Paragraph 22, we discussed a proposal offered by Destineer, Inc., a PCS licensee, that we establish a CMRS Messaging Service fee category to replace our CMRS One-Way Paging fee category. Destineer stated that, with the exception of two-way paging services, our CMRS Mobile Services fee category includes only broadband services which provide two-way interactive voice communications. Destineer recommended establishing a CMRS Messaging Service to include all narrowband services, including two-way paging services. We invite interested parties to file comments on Destineer's proposal or propose alternative methods to assess CMRS fees for FY 1997. We are particularly interested in the number of estimated units associated with an alternative proposal and the impact the proposed changes would have on projected revenues.

4. Intelsat & Inmarsat Signatories

40. The Commission incurs regulatory costs for satellite policy and rulemaking, enforcement and user information activities. As directed by Congress, these costs must be recovered through the collection of regulatory fees. In accordance with the provisions of Section 9, the Commission's overall goal is to recover all of the costs associated with satellite regulatory activities and to distribute these costs fairly amongst fee payers, taking into account factors

reasonably related to the benefits provided by the payer, and "other factors we determine are necessary in the public interest."

41. In FY 1994 and FY 1995 the Commission recovered satellite regulatory costs by collecting fees from satellite earth station and geosynchronous space station regulatees (Part 25) only. Satellite providers using international bearer circuits to provide service were assessed a separate fee under the International Bearer Circuits category in order to recover the regulatory costs associated with international telecommunications policy and rulemaking, enforcement and user information activities. The Commission received comments during both years' regulatory fees proceedings concerning the distribution of the burden of costs. In an effort to explore alternative methods of fee collection the Commission conducted focus group sessions in FY 1995 which were attended by satellite industry representatives. One of the major issues raised was a perceived inequity in the distribution of the total satellite regulatory fee burden. Commission activities associated with Intelsat, Inmarsat and the U.S. signatory to both were identified as areas where space and earth station regulatees were unfairly bearing the regulatory fee burden.

42. In response to distribution issues raised in the focus group sessions and comments filed in previous years, we examined satellite regulatory activities and determined that since the Commission incurs regulatory costs associated with Signatory-related activities, a regulatory fee for Signatories was the proper vehicle for recovering these costs. In its comments on the proposed FY 1996 fees, Comsat challenged the Commission's proposal regarding the Signatory fee, contending that it would be unlawful and excessive. Each of these arguments was discussed in our FY 1996 Report and Order, in which we adopted the Signatory fee. However, in Paragraph 47 of the FY 1996 Report and Order, we indicated our intent to explore alternative means of recovering these costs and to seek public comment on such alternatives. We therefore request interested parties to comment on alternative methods of collecting costs associated with Signatories. We request that comments specify whether other regulatees should be assessed a portion of the fee applicable to the signatory category, and, if so, the estimated percentage of the fee that should be assessed upon other regulatees. We are particularly interested in ways to recover our costs without unfairly burdening other regulatees. If no specific alternative is identified, we propose to retain the current Signatory fee category for FY 1997.

5. Non-Common Carrier International Bearer Circuits

43. International bearer circuit fees are currently assessed upon domestic and international common carriers only. In its comments responding to proposals contained in our FY 1996 NPRM, Comsat contended that payment of international bearer circuit fees should be expanded to non-common carriers providing international services. See FY 1996 Report and Order at Paragraph 65. In our FY 1996 Report and Order we declined to expand collection of international bearer circuit fees to non-common carriers. As we noted at that time, the Commission is unable, due to lack of appropriate data, to calculate a fee applicable to bearer circuits provided directly to end users over non-common carrier domestic and international

facilities. The foregoing situation has not changed. We, therefore, are proposing to assess the international bearer circuit fee only on domestic and international common carriers in FY 1997. However, we invite interested parties to comment on Comsat's proposal. We are especially interested in information concerning the number of bearer circuits provided directly to end users over non-common carrier domestic and international facilities.

D. Procedures for Payment of Regulatory Fees

44. Generally, we propose to retain the procedures that we have established for the payment of regulatory fees. Section 9(f) requires that we permit "payment by installments in the case of fees in large amounts, and in the case of small amounts, shall require the payment of the fee in advance for a number of years not to exceed the term of the license held by the payer." See 47 U.S.C. § 159(f)(1). Consistent with Section 9(f), we are again establishing three categories of fee payments, based upon the category of service for which the fee payment is due and the amount of the fee to be paid. The fee categories are (1) "standard" fees, (2) "large" fees, and (3) "small" fees.

1. Annual Payments of Standard Fees

45. Standard fees are those regulatory fees that are payable in full on an annual basis. Payers of standard fees are not required to make advance payments for their full license term and are not eligible for installment payments. All standard fees are payable in full on the date we establish for payment of fees in their regulatory fee category. The payment dates for each regulatory fee category will be announced either in the Report and Order in this proceeding or by public notice in the Federal Register following the termination of this proceeding.

2. Installment Payments for Large Fees

46. While we are mindful that time constraints may preclude an opportunity for installment payments, we propose that regulatees in any category of service with a liability of \$12,000 or more be eligible to make installment payments and that eligibility for installment payments be based upon the amount of either a single regulatory fee payment or combination of fee payments by the same licensee or regulatee. We propose that regulatees eligible to make installment payments may submit their required fees in two equal payments (on dates to be announced) or, in the alternative, in a single payment on the date that their final installment payment is due. Due to statutory constraints concerning notification to Congress prior to actual collection of the fees, however, it is unlikely that there will be sufficient time for installment payments, and that regulatees eligible to make installment payments will be required to pay these fees on the last date that fee payments may be submitted. The dates for installment payments, or a single payment, will be announced either in the Report and Order terminating this proceeding or by public notice published pursuant to delegated authority in the Federal Register.

3. Advance Payments of Small Fees

47. As we have in the past, we are proposing to treat regulatory fee payments by certain licensees as "small" fees subject to advance payment consistent with the requirements of Section 9(f)(2). Advance payments will be required from licensees of those services that we decided would be subject to advance payments in our FY 1994 Report and Order, and to those additional payers set forth herein.¹⁷ Payers of advance fees will submit the entire fee due for the full term of their licenses when filing their initial, renewal, or reinstatement application. Regulatees subject to a payment of small fees shall pay the amount due for the current fiscal year multiplied by the number of years in the term of their requested license. In the event that the required fee is adjusted following their payment of the fee, the payer would not be subject to the payment of a new fee until filing an application for renewal or reinstatement of the license. Thus, payment for the full license term would be made based upon the regulatory fee applicable at the time the application is filed. The effective date for payment of small fees established in this proceeding will be announced in our Report and Order terminating this proceeding or by public notice published pursuant to delegated authority in the Federal Register.

4. Minimum Fee Payment Liability

48. Regulatees whose total fee liability, including all categories of fees for which payment is due by an entity, amounts to less than \$10 are exempted from fee payment in FY 1997.

5. Standard Fee Calculations and Payment Dates

49. As noted, the time for payment of standard fees and any installment payments will be published in the Federal Register pursuant to delegated authority. For licensees, permittees and holders of other authorizations in the Common Carrier, Mass Media, and Cable Services whose fees are not based on a subscriber, unit, or circuit count, fees should be submitted for any authorization held as of October 1, 1996. October 1 is the date to be used for establishing liability for payment of standard fees since it is the first day of the federal government's fiscal year.

50. In the case of regulatees whose fees are based upon a subscriber, unit or circuit count, the number of a regulatees' subscribers, units or circuits on December 31, 1996, will be used

¹⁷ Applicants for new, renewal and reinstatement licenses in the following services will be required to pay their regulatory fees in advance: Land Mobile Services, Microwave services, Marine (Ship) Service, Marine (Coast) Service, Private Land Mobile (Other) Services, Aviation (Aircraft) Service, Aviation (Ground) Service, General Mobile Radio Service (GMRS). In addition, applicants for Amateur Radio vanity call signs will be required to submit an advance payment.

to calculate the fee payment.¹⁸ We have selected the last date of the calendar year because many of these entities file reports with us as of that date. Others calculate their subscriber numbers as of that date for internal purposes. Therefore, calculation of the regulatory fee as of that date will facilitate both an entity's computation of its fee payment and our verification that the correct fee payment has been submitted.

E. Schedule of Regulatory Fees

51. The Commission's proposed Schedule of Regulatory Fees for FY 1997 is contained in Attachment F of this NPRM.

IV. Procedural Matters

A. Comment Period and Procedures

52. Pursuant to procedures set forth in Sections 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before [Insert date 15 days after publication in the FEDERAL REGISTER], and reply comments on or before [Insert date 25 days after publication in the FEDERAL REGISTER]. All relevant comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments and supporting materials. If participants want each Commissioner to receive a personal copy of their comments, an original and nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Interested parties, who do not wish to formally participate in this proceeding, may file informal comments at the same address. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20054.

B. Ex Parte Rules

53. This is a non-restricted notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed pursuant to the Commission's rules. See 47 CFR §§ 1.1202, 1.1203 and 1026(a).

¹⁸ Cable system operators are to compute their subscribers as follows: Number of single family dwellings + number of individual households in multiple dwelling unit (apartments, condominiums, mobile home parks, etc.) paying at the basic subscriber rate + bulk rate customers + courtesy and free service. Note: Bulk-Rate Customers = Total annual bulk-rate charge divided by basic annual subscription rate for individual households. Cable system operators may base their count on "a typical day in the last full week" of December 1996, rather than on a count as of December 31, 1996.

C. Initial Regulatory Flexibility Analysis

54. As required by section 603 of the Regulatory Flexibility Act (Public Law 96-354, 94 Stat. 1165, 5 U.S.C. § 601 et seq. (1981)), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. The IRFA is set forth in Attachment A. Written public comments are requested with respect to the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the rest of the NPRM, but they must have a separate and distinct heading, designating the comments as responses to the IRFA. The Secretary shall send a copy of this NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act.

D. Paperwork Reduction Act Compliance

55. The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected, and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

56. Written comments should be submitted on or before [insert date 60 days after date of publication in the FEDERAL REGISTER]. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

57. Direct all comments to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to dconway@fcc.gov, and Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 17th St., N.W. Washington, DC 20503 or via internet to fain_t@al.eop.gov.

58. FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections, contact Dorothy Conway at 202-418-0217 or via internet at dconway@fcc.gov.

OMB Approval Number: (Number should be included if it is a revision to an existing collection)

Title:

Form No.:

Type of Review: (i.e. new collection, revision of existing collection)

Respondents:

Number of Respondents:

Estimated Time Per Response:

Total Annual Burden:


Needs and Uses: (Brief description of how the information will be used)

E. Authority and Further Information

59. Authority for this proceeding is contained in sections 4(i) and (j), 9, and 303(r) of the Communications Act of 1934 as amended, 47 U.S.C. §§ 154(1) and (j) and 159 and 303(r).

60. Further information about this proceeding may be obtained by contacting the Fees Hotline at (202) 418-0192.

FEDERAL COMMUNICATIONS COMMISSION



William F. Caton

Acting Secretary

INITIAL REGULATORY FLEXIBILITY ANALYSIS

1. As required by the Regulatory Flexibility Act (RFA),¹⁹ as amended by the Contract with America Advancement Act (CWAAA), Public Law 104-121, 110 Stat. 847 (1996),²⁰ the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected significant economic impact on small entities by the policies and rules proposed in this Notice of Proposed Rulemaking In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 1997. Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM provided above in Paragraph 53.

I. Need for and Objectives of the Proposed Rule:

2. This rulemaking proceeding is initiated to obtain comments concerning the Commission's proposed amendment of its Schedule of Regulatory Fees in order to collect regulatory fees in the amount of \$152,523,000, the amount that Congress has required the Commission to recover through regulatory fees in Fiscal Year 1997. The Commission seeks to collect the necessary amount through its proposed revised regulatory fees, as contained in the attached Schedule of Regulatory Fees, in the most efficient manner possible and without undue burden to the public.

II. Legal Basis:

3. The proposed action is authorized under Sections (4)(i) and (j), 9 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and (j), 159, and 303(r).

III. Description and Estimate of the Number of Small Entities To Which the Proposed Rule Will Apply:

4. The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction" and "the same meaning as the term 'small business concern' under the Small Business Act unless the Commission has developed one or more definitions that are appropriate for its activities."²¹ A

¹⁹ 5 U.S.C. § 603.

²⁰ Title II of the CWAAA is "The Small Business Regulatory Enforcement Fairness Act of 1996" (SBREFA), codified at 5 U.S.C. § 601 et seq.

²¹ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency

small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).²² The Small Business Enforcement Fairness Act of 1996 (SBREFA) provision of the RFA also applies to nonprofit organizations and to governmental organizations such as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations of less than 50,000.²³ There are 85,006 governmental entities in the United States.²⁴ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

CABLE SERVICES OR SYSTEMS

5. The SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating \$11 million or less in revenue annually.²⁵ This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau, there were 1,788 total cable and other pay television services and 1,423 had less than \$11 million in revenue.²⁶

6. The Commission has developed its own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a "small cable company," is one serving fewer than 400,000 subscribers nationwide.²⁷ Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable system

and publishes such definition(s) in the Federal Register."

²² Small Business Act, 15 U.S.C. § 632 (1996).

²³ 5 U.S.C. § 601(5).

²⁴ United States Dept. of Commerce, Bureau of the Census, 1992 Census of Governments (1992 Census).

²⁵ 13 CFR §121.201, SIC 4841.

²⁶ 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D, SIC 4841 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

²⁷ 47 CFR § 76.901(e). The Commission developed this definition based on its determination that a small cable system operator is one with annual revenues of \$100 million or less. Implementation of Sections of the 1992 Cable Act: Rate Regulation, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393 (1995), 60 FR 10534 (February 27, 1995).

operators at the end of 1995.²⁸ Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators.

7. The Communications Act also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000."²⁹ The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 617,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed \$250 million in the aggregate.³⁰ Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals 1,450.³¹ We do not request nor do we collect information concerning whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000,³² and thus are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act. It should be further noted that recent industry estimates project that there will be a total 65,000,000 subscribers, and we have based our fee revenue estimates on that figure.

8. **Other Pay Services.** Other pay television services are also classified under SIC 4841, which includes cable systems operators, closed circuit television services, direct broadcast satellite services (DBS),³³ multipoint distribution systems (MDS),³⁴ satellite master antenna systems (SMATV), and subscription television services.

COMMON CARRIER SERVICES AND RELATED ENTITIES

9. According to the Telecommunications Industry Revenue: Telecommunications Relay Service Fund Worksheet Data (TRS Worksheet), there are 2,847 interstate carriers. These

²⁸ Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for December 30, 1995).

²⁹ 47 U.S.C. § 543(m)(2).

³⁰ 47 CFR § 76.1403(b).

³¹ Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

³² We do receive such information on a case-by-case basis only if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to section 76.1403(b) of the Commission's rules. See 47 CFR § 76.1403(d).

³³ Direct Broadcast Services (DBS) are discussed in depth with the international services *infra*.

³⁴ Multipoint Distribution Services (MDS) are discussed in depth with the mass media services *infra*.